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7
8 UNITED STATES DISTRICT COURT

9 NORTHERN DISTRICT OF CALIFORNIA – SAN FRANCISCO

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11 ESTATE OF NICHOLAS TORRICO,
deceased, BONNIE JEAN TORRICO,
12 individually and as successor in interest to the
ESTATE OF NICHOLAS TORRICO,
13 CARLOS TORRICO, individually and as
successor in interest to the ESTATE OF
14 NICHOLAS TORRICO,

15 Plaintiffs,

16 vs.

17 CITY AND COUNTY OF SAN
FRANCISCO, VICTOR WYRSCH,
18 JOANNE HAYES-WHITE, in her official
capacity as Chief of the San Francisco
19 Fire Department, and DOES 1 through
20 20,

21 Defendants.

CASE NO.

COMPLAINT FOR DAMAGES
42 U.S.C. § 1983

Jury Trial Demanded

22 Plaintiffs allege:

23 1) NICHOLAS TORRICO died on October 12, 2006 in the City and County
24 of San Francisco. All claims for damages suffered by NICHOLAS TORRICO prior to
25 his death are asserted in this complaint by the ESTATE OF NICHOLAS TORRICO,
26 pursuant to California Code of Civil Procedure §§ 377.10, et seq.

27 2) Plaintiff BONNIE JEAN TORRICO is the surviving mother of NICHOLAS
28 TORRICO. BONNIE JEAN TORRICO brings this lawsuit in her own behalf and as

1 successor in interest to the ESTATE OF NICHOLAS TORRICO. The declaration of
2 BONNIE JEAN TORRICO required by California Code of Civil Procedure § 377.32,
3 establishing her right to prosecute the surviving claims of NICHOLAS TORRICO is
4 filed and will be served with this complaint.

5 3) Plaintiff CARLOS TORRICO is the surviving father of NICHOLAS
6 TORRICO. CARLOS TORRICO brings this lawsuit on his own behalf and as
7 successor in interest to the ESTATE OF NICHOLAS TORRICO. The declaration of
8 CARLOS TORRICO required by California Code of Civil Procedure § 377.32,
9 establishing his right to prosecute the surviving claims of NICHOLAS TORRICO is filed
10 and will be served with this complaint.

11 4) Defendant CITY AND COUNTY OF SAN FRANCISCO is a municipal
12 entity, organized and maintained in accordance with the laws of the State of California.
13 The CITY AND COUNTY OF SAN FRANCISCO is located within this judicial district.
14 CITY AND COUNTY OF SAN FRANCISCO operates, maintains, and controls the San
15 Francisco Fire Department and the San Francisco Police Department.

16 5) Defendant VICTOR WYRSCH is, and at all relevant times was a member
17 of the San Francisco Fire Department, holding the rank of Lieutenant.

18 6) Defendant JOANNE HAYES-WHITE is, and at all relevant times was the
19 Chief of the San Francisco Fire Department. At all relevant times, JOANNE HAYES-
20 WHITE had final policy-making authority with respect to the San Francisco Fire
21 Department.

22 7) Plaintiffs are ignorant of the true names and capacities of those
23 defendants identified in this complaint as DOES 1 through 20, and therefore sue such
24 defendants by fictitious names. Plaintiffs are informed and believe that each
25 fictitiously-named defendant contributed in some manner to the damages suffered by
26 plaintiffs as alleged in this complaint. Plaintiffs will amend this complaint to state the
27 correct names and capacities of DOES 1 through 20 when they have been
28 ascertained. Each reference in this complaint to "defendant," "defendants," or to a
specifically-named defendant refers also to defendants DOES 1 through 20.

1 8) On October 12, 2006, Nicholas Torrico climbed a fire escape to the roof
2 of a four-story building at 900 Powell Street in San Francisco, and stood near the edge
3 of the roof. Several persons in the vicinity noticed Torrico waving at a passing cable
4 car from his position on the ledge, and reported observing a potentially dangerous
5 situation to the emergency dispatch system in San Francisco. Dispatchers broadcast
6 the information, and directed police and fire units to 900 Powell Street. Torrico
7 maintained his position on the roof while the calls were made and while the police and
8 fire units traveled to the scene.

9 9) Responding police and fire units promptly implemented a plan to
10 investigate the behavior of Nicholas Torrico and to offer safety assistance as needed.
11 In accordance with their professional training, the police officers and firefighters
12 intended to contact Nicholas Torrico, ascertain his physical and emotional state, and to
13 proceed as needed to protect the safety of Torrico and others in the area.

14 10) San Francisco Police Sergeant Catanzaro established voice contact with
15 Nicholas Torrico. Torrico told Catanzaro several times that he missed his family and
16 wanted to go home. Torrico did not state or demonstrate that he had the intention or
17 desire to end his life. Catanzaro continued to engage Torrico in conversation, while
18 other collaborating members of the team gained entry to 900 Powell Street. Several
19 officers established a position from which they could make contact with Torrico if and
20 when requested by Torrico or directed by the officers in command.

21 11) Without the knowledge or consent of the police and other fire officials at
22 the scene, and without informing anyone of his intent to do so, defendant WYRSCH
23 climbed to the roof of 900 Powell Street, and quickly and surreptitiously approached
24 Nicholas Torrico. WYRSCH had not communicated with Torrico in any manner.
25 Disregarding the orders of the officers in command, and without taking any physical
26 precautions for his own safety or the safety of Torrico, defendant WYRSCH leaned
27 over the low wall separating Torrico from the rest of the roof, and forcefully grabbed
28 Torrico around his torso from behind.

 12) Torrico was startled when he was grabbed by WYRSCH without warning.

1 The sudden use of force by WYRSCH caused Torrico to lose his balance, and
2 WYRSCH struggled to regain a secure footing. WYRSCH could not retain his grasp
3 on Torrico without also losing his own balance, and WYRSCH released Torrico.
4 Although Torrico struggled to regain a secure grip on the roof, he was unable to do so,
5 and fell onto the pavement below, sustaining severe blunt force injuries. Torrico later
6 died from the injuries sustained in this fall.

7 13) Plaintiffs hereby demand a jury trial in this action.

8 FIRST CLAIM FOR RELIEF

9 42 U.S.C. § 1983

10 (By All Plaintiffs Against Defendant WYRSCH)

11 14) Plaintiffs hereby reallege and incorporate by reference paragraphs 1
12 through 13 as though fully set forth in this claim for relief.

13 15) Plaintiffs are informed and believe, and on that basis allege that in
14 committing each of the acts alleged in this claim for relief, defendant WYRSCH was
15 acting under color of law, within the scope of his official duties with the San Francisco
16 Fire Department.

17 16) Plaintiffs were deprived of their constitutional rights under the Fourth and
18 Fourteenth Amendments to the United States Constitution as a proximate result of
19 conduct by WYRSCH

20 17) The conduct of WYRSCH, as described in this complaint, involved the
21 intentional use of force to limit the freedom of movement of Nicholas Torrico, and
22 constituted a seizure of Nicholas Torrico within the meaning of the Fourth Amendment
23 to the United States Constitution. At all relevant times, it was reasonably foreseeable
24 that Nicholas Torrico would be startled if he were suddenly grabbed from behind
25 without his knowledge or consent, and that Torrico was at risk of falling if he were
26 caused to lose his balance. The use of force by WYRSCH was unnecessary,
27 excessive, and unreasonable under the circumstances, and caused Nicholas Torrico
28 to be deprived of his right to be free from unreasonable seizures as protected by the
Fourth Amendment to the United States Constitution.

1 18) In undertaking the course of conduct described in this complaint,
2 WYRSCH was deliberately indifferent to the known risk of harm to Nicholas Torrico.
3 WYRSCH was deliberately indifferent to the knowledge that his own position on the
4 roof had not been physically secured, and that if either he or Torrico lost his balance,
5 either WYRSCH, Torrico, or both would be at grave risk of falling. WYRSCH's conduct
6 was reckless and conscience-shocking in that he violated the express orders of the
7 command structure at the scene in approaching Torrico and forcefully grabbing Torrico
8 without Torrico's knowledge or consent. The conduct of WYRSCH caused Nicholas
9 Torrico to suffer a deprivation of his substantive liberty interest in the preservation of
10 his life, as protected by the Fourteenth Amendment to the United State Constitution.
11 The conduct of WYRSCH also caused BONNIE JEAN TORRICO and CARLOS
12 TORRICO to suffer deprivation of their substantive liberty interest in preserving their
13 familial relationship with Nicholas Torrico, as protected by the Fourteenth Amendment
14 to the United States Constitution.

15 19) As a proximate result of the violation the Fourth and Fourteenth
16 Amendment rights of Nicholas Torrico, Torrico incurred severe physical injuries, and
17 extreme physical and emotional pain, suffering, and fear prior to his death. Although
18 these damages would not survive the death of Nicholas Torrico under the laws of the
19 State of California, precluding an award of such damages when unconstitutional
20 conduct under color of law results in death is inconsistent with the remedial purposes
21 of 42 United States Code Section 1983, and these damages therefore survive
22 Torrico's death under federal law. As a further proximate result of the violation of the
23 Fourth and Fourteenth Amendment rights of Nicholas Torrico, Torrico incurred
24 substantial expenses for the medical treatment of his injuries. Defendant WYRSCH is
25 therefore liable for these damages to the ESTATE OF NICHOLAS TORRICO.

26 20) As a proximate result of defendants' conduct which violated the
27 Fourteenth Amendment rights of BONNIE JEAN TORRICO and CARLOS TORRICO,
28 these plaintiffs suffered the loss of their familial relationship with Nicholas Torrico, and
the right to enjoy the continued love, solace, comfort, companionship and support

1 provided by Nicholas Torrico. In addition, BONNIE JEAN TORRICO and CARLOS
 2 TORRICO incurred expenses for the final disposition of the remains of Nicholas
 3 Torrico. Defendant WYRSCH is therefore liable for these damages to BONNIE JEAN
 4 TORRICO and CARLOS TORRICO.

5 21) As a further proximate result of defendants' conduct, the violation of
 6 plaintiffs' rights under the Constitution caused plaintiffs to suffer nominal damages for
 7 the loss of such rights. Defendant WYRSCH is therefore liable for these damages to
 8 the ESTATE OF NICHOLAS TORRICO, and to BONNIE JEAN TORRICO and
 9 CARLOS TORRICO.

10 22) As a further proximate result of defendants' conduct, plaintiffs incurred
 11 expenses for attorneys' and investigators' fees. Plaintiffs are entitled to an award of all
 12 such fees incurred pursuant to 42 United States Code section 1988.

13 WHEREFORE, plaintiffs pray for relief as set forth below.

14 SECOND CLAIM FOR RELIEF

15 42 U.S.C. § 1983

16 (By All Plaintiffs Against Defendants JOANNE HAYES-WHITE and CITY AND
 17 COUNTY OF SAN FRANCISCO)

18 23) Plaintiffs hereby reallege and incorporate by reference paragraphs 1
 19 through 22 as though fully set forth in this claim for relief.

20 24) Plaintiffs were deprived of their rights under the Fourth and Fourteenth
 21 Amendments to the United States Constitution as a proximate result of
 22 unconstitutional conduct by WYRSCH, which was committed in accordance with
 23 informal policies and practices adopted and promoted by the CITY AND COUNTY OF
 24 SAN FRANCISCO and JOANNE HAYES-WHITE. Plaintiffs' injuries were also the
 25 proximate result of defendant JOANNE HAYES-WHITE's ratification of WYRSCH's
 26 unconstitutional conduct.

27 25) Plaintiffs are informed and believe, and on that basis allege that in
 28 committing each of the acts alleged in this claim for relief, defendants WYRSCH and

1 HAYES-WHITE were acting under color of law, within the scope of their official duties
2 with the San Francisco Fire Department.

3 26) Plaintiffs are informed and believe, and on that basis allege that public
4 safety workers, including firefighters and police officers, are trained to coordinate their
5 actions and to follow the orders of their commanding officers when responding to
6 potential public safety emergencies. When approaching a subject in an exposed
7 position, emergency personnel are also trained to secure their own safety before
8 making contact with the subject, and to avoid sudden movements which may startle
9 the subject, as such actions are known to increase the danger to the subject. Plaintiffs
10 are further informed and believe, and on that basis allege that a primary purpose of
11 such training is to promote the safety and well-being of public safety workers and
12 members of the public.

13 27) Plaintiffs are further informed and believe, and on that basis allege that
14 despite the knowledge and training of its public safety professionals, CITY AND
15 COUNTY OF SAN FRANCISCO pursues an informal policy and practice of allowing
16 individual firefighters to undertake precipitate, self-directed responses to public safety
17 emergencies. The existence of this municipal policy is evidenced by a continuing
18 pattern and practice of tolerating and ratifying acts of insubordination and/or self-
19 directed conduct by defendant WYRSCH and other firefighters when responding to
20 potential public safety emergencies. Plaintiffs are informed and believe, and on that
21 basis allege that there have been multiple previous occurrences of insubordinate
22 and/or self-directed, precipitate conduct during public safety emergencies by
23 defendant WYRSCH and other firefighters which have been ratified, condoned,
24 approved, and encouraged by supervisory officials, including defendant JOANNE
25 HAYES-WHITE. Accordingly, the conduct of WYRSCH in proximately causing the
26 death of Nicholas Torrico and the violations of plaintiffs' constitutional rights was set in
27 motion by the informal policies and practices of the CITY AND COUNTY OF SAN
28 FRANCISCO.

28 28) As Chief of the San Francisco Fire Department, defendant JOANNE

1 HAYES-WHITE is an official with final decision-making authority, and is empowered to
2 establish, determine, evaluate, and revise the policies of the San Francisco Fire
3 Department. After learning that defendant WYRSCH had ignored the command
4 structure at the scene, and interfered with the efforts of his fellow officers and
5 firefighters to investigate and resolve the potential emergency presented by Torrico,
6 and that the interference by WYRSCH had both proximately caused the death of
7 Nicholas Torrico and created a grave risk of severe physical harm to WYRSCH,
8 defendant JOANNE HAYES-WHITE, in her individual and official capacities, ratified
9 the actions taken by WYRSCH and exonerated WYRSCH of any professional
10 misconduct. These actions by defendant JOANNE HAYES-WHITE are evidence that
11 the conduct of WYRSCH was consistent with, and reflective of, the policies and
12 practices of the CITY AND COUNTY OF SAN FRANCISCO which caused the
13 violations of plaintiffs' constitutional rights.

14 29) As a proximate result of defendants' conduct which violated the Fourth
15 and Fourteenth Amendment rights of Nicholas Torrico, Nicholas Torrico incurred
16 severe physical injuries, and extreme physical and emotional pain, suffering, and fear
17 prior to his death. Although these damages would not survive the death of Nicholas
18 Torrico under the laws of the State of California, precluding an award of such damages
19 when unconstitutional conduct under color of law results in death is inconsistent with
20 the remedial purposes of 42 United States Code section 1983 and these damages
21 therefore survive under federal law. Defendants CITY AND COUNTY OF SAN
22 FRANCISCO and JOANNE HAYES-WHITE are therefore liable for these damages to
23 the ESTATE OF NICHOLAS TORRICO. As a further proximate result of the violation
24 of the Fourth and Fourteenth Amendment rights of Nicholas Torrico, Torrico incurred
25 substantial expenses for the medical treatment of his injuries. Defendants CITY AND
26 COUNTY OF SAN FRANCISCO and JOANNE HAYES-WHITE are liable for these
27 damages to the ESTATE OF NICHOLAS TORRICO.

28 30) As a proximate result of defendants' conduct which violated the
Fourteenth Amendment rights of BONNIE JEAN TORRICO and CARLOS TORRICO,

1 these plaintiffs suffered the loss of their familial relationship with Nicholas Torrico, and
 2 the right to enjoy the continued love, solace, comfort, companionship and support
 3 provided by Nicholas Torrico. In addition, BONNIE JEAN TORRICO and CARLOS
 4 TORRICO incurred expenses for the final disposition of the remains of Nicholas
 5 Torrico. Defendants CITY AND COUNTY OF SAN FRANCISCO and JOANNE
 6 HAYES-WHITE are therefore liable for these damages to BONNIE JEAN TORRICO
 7 and CARLOS TORRICO.

8 31) As a further proximate result of defendants' conduct, the violation of
 9 plaintiffs' rights under the Constitution caused plaintiffs to suffer nominal damages for
 10 the loss of such rights. Defendants CITY AND COUNTY OF SAN FRANCISCO and
 11 JOANNE HAYES-WHITE are therefore liable for these damages to the ESTATE OF
 12 NICHOLAS TORRICO, and to BONNIE JEAN TORRICO and CARLOS TORRICO.

13 32) As a further proximate result of defendants' conduct, plaintiffs incurred
 14 expenses for attorneys' and investigators' fees. Plaintiffs are entitled to an award of all
 15 such fees incurred pursuant to 42 United States Code Section 1988.

16 WHEREFORE, plaintiffs pray for relief as set forth below.

17 THIRD CLAIM FOR RELIEF

18 Wrongful Death - California Code of Civil Procedure §§ 377.60, et seq.

19 (By Plaintiffs BONNIE JEAN TORRICO and CARLOS TORRICO Against Defendants
 20 WYRSCH and CITY AND COUNTY OF SAN FRANCISCO)

21 33) Plaintiffs hereby reallege and incorporate by reference paragraphs 1
 22 through 13 as though fully set forth in this claim for relief.

23 34) Plaintiffs are informed and believe, and on that basis allege that at all
 24 relevant times, each defendant was the agent and or employee of every other
 25 defendant, acting within the course and scope of his or her authority as such agent or
 26 employee.

27 35) At all relevant times, defendant WYRSCH was acting in his capacity as a
 28 municipal employee providing emergency rescue services. At all relevant times,
 Nicholas Torrico was at risk for injury. Defendant WYRSCH was subject to a duty to

1 refrain from taking actions which would increase the recognized risks of harm faced by
2 Nicholas Torrico.

3 36) In undertaking the course of conduct described in this complaint,
4 WYRSCH had actual and/or constructive knowledge that grabbing Nicholas Torrico
5 from behind greatly increased the risk of harm to Nicholas Torrico. Plaintiffs are
6 informed and believe, and on that basis allege that the applicable standard of care
7 required a coordinated approach by the emergency personnel involved. When
8 approaching a subject in an exposed position, emergency personnel are also trained
9 to secure their own safety before making contact with the subject, and to avoid sudden
10 movements which may startle the subject, as such actions are known to increase the
11 danger to the subject.

12 37) The conduct of defendant WYRSCH as described in this complaint was
13 grossly negligent and represented an extreme departure from the standard of care. At
14 the time WYRSCH approached and grabbed Nicholas Torrico, he had actual and/or
15 constructive knowledge that his actions directly increased the risk of harm to Torrico,
16 that WYRSCH was placing himself at risk of falling by leaning over an exposed, four-
17 story ledge to grab Torrico without securing his own position, and that his actions
18 directly conflicted and interfered with the plan then being implemented by the other
19 rescue personnel at the scene.

20 38) Nicholas Torrico died as a proximate result of WYRSCH's negligence,
21 causing BONNIE JEAN TORRICO and CARLOS TORRICO to be wrongfully deprived
22 of the love, solace, comfort, companionship and support provided by Nicholas Torrico
23 during his lifetime, and to incur expenses for the final disposition of the remains of
24 Nicholas Torrico.

25 WHEREFORE, plaintiffs pray for relief as set forth below.

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FOURTH CLAIM FOR RELIEF

Negligence; California Code of Civil Procedure §§ 377.60, et seq.

(By Plaintiffs BONNIE JEAN TORRICO and CARLOS TORRICO Against Defendant
WYRSCH)

39) Plaintiffs hereby reallege and incorporate by reference paragraphs 1 through 13 as though fully set forth in this claim for relief.

40) Plaintiffs are informed and believe, and on that basis allege for purposes of this claim for relief only that at all relevant times, defendant VICTOR WYRSCH was acting as a private person, and did not commit the acts and omissions alleged in this complaint under color of law or within the course and scope of his employment as a member of the San Francisco Fire Department and therefore was not subject to any duty to come to the rescue of Nicholas Torrico.

41) Having independently and specifically undertaken to intervene in the potential emergency presented by Nicholas Torrico, WYRSCH was subject to a duty of reasonable care to avoid increasing the risk of harm to Torrico. WYRSCH was also subject to a duty of care to avoid inducing Torrico to rely on any undertaking by WYRSCH.

42) At all relevant times, WYRSCH knew that several San Francisco emergency personnel, equipped with rescue equipment, were engaged in active efforts to engage Nicholas Torrico and to encourage Torrico to return to a position of safety. At all relevant times, it was reasonably foreseeable that Torrico was at risk of falling if he were startled, or otherwise caused to lose his balance. At all relevant times, it was reasonably foreseeable that interrupting and interfering with the efforts of emergency personnel to rescue Torrico would increase the risk of harm to Torrico. At all relevant times, it was reasonably foreseeable that WYRSCH would not be able to retain his grip on Torrico if Torrico lost his balance, since that would also place WYRSCH at grave risk of falling off the roof.

43) WYRSCH breached his duty of care to Nicholas Torrico in interfering with the efforts of the public safety personnel on the scene. WYRSCH also breached the

1 applicable duty of care in grabbing Nicholas Torrico without warning and without
 2 Torrico's consent. WYRSCH also breached this duty in leaning over an exposed, four-
 3 story ledge to grab Torrico without making any provision for WYRSCH's own stability
 4 and security, thereby limiting his ability to physically secure Torrico. By these actions,
 5 WYRSCH actively increased the risk of harm to Torrico. By these actions, WYRSCH
 6 also induced Torrico to rely on WYRSCH, rather than the coordinated efforts of the
 7 public safety personnel on the scene.

8 44) Nicholas Torrico died as a proximate result of WYRSCH's negligence,
 9 causing BONNIE JEAN TORRICO and CARLOS TORRICO to be wrongfully deprived
 10 of the love, solace, comfort, companionship and support provided by Nicholas Torrico
 11 during his lifetime, and to incur expenses for the final disposition of the remains of
 12 Nicholas Torrico.

13 WHEREFORE, plaintiffs pray for relief as follows:

14 1) For an award of general damages for pain and suffering to the ESTATE
 15 OF NICHOLAS TORRICO in accordance with the laws of the United States;

16 2) For an award of damages for the loss of the love, solace, comfort,
 17 companionship and support provided by Nicholas Torrico during his lifetime to
 18 BONNIE JEAN TORRICO and CARLOS TORRICO;

19 3) For recovery of expenses incurred by BONNIE JEAN TORRICO and
 20 CARLOS TORRICO for the disposition of the remains of Nicholas Torrico;

21 4) For nominal damages for the deprivations of constitutional rights suffered
 22 by the ESTATE OF NICHOLAS TORRICO, BONNIE JEAN TORRICO, and CARLOS
 23 TORRICO;

24 4) For reasonable attorneys' fees pursuant to 42 U.S.C. § 1988;

25 5) For costs incurred; and

26 6) For such other and further relief as the court may deem fair and just.

27 Dated: _____

 Michael D. Meadows
CASPER, MEADOWS, SCHWARTZ & COOK
 Attorneys for Plaintiffs